

# **STATE OF MINNESOTA HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN (QAP)**

## **ARTICLE 1 DEFINITIONS**

1.0 Metropolitan Area: The area over which the Metropolitan Council has jurisdiction, including only the counties of Anoka, Carver, Dakota excluding the city of Northfield, Hennepin excluding the city of Hanover, Ramsey, Scott excluding the city of New Prague, and Washington.

1.1 Single Room Occupancy: A unit having one bedroom or less with rents affordable at 30% of median income.

1.2 Substantial Rehabilitation: Rehabilitation of at least \$5,000 per unit, as defined in MN Statute Section 462A.221, Subdivision 5.

1.3 Family Housing: A housing development that is not restricted to persons 55 years old or older. At least 75% must contain three or more bedrooms.

1.4 Federally Assisted Units: Any housing receiving federal project based rental assistance, operating subsidies or mortgage interest reduction payments. The Federal Programs include public housing; Rural Development financed properties; Section 236 and Section 221(d)(3) interest reduction payments; and any development with a project based Section 8, rent supplement, or rental assistance payment contract.

## **ARTICLE 2**

### **PREPARATION OF THE PLAN**

2.0 Pursuant to Section 42(m) of the U.S. Internal Revenue Code (the Code), Housing Credit Agencies are required to develop and adopt a “Qualified Allocation Plan” (the “Plan”). The Plan sets forth selection criteria which are appropriate to local conditions and priorities for allocating Tax Credits to housing projects.

2.1 Minn. Statutes, Section 462A.221 to 462A.225 (the Statute) provides that the federal allocation of tax credits available in Minnesota should be allocated among certain cities and counties and the Minnesota Housing Finance Agency (MHFA). The MHFA is the designated Agency for the State of Minnesota, 462A.223, Subd. 2.

2.2 The Plan was prepared by the staff of the MHFA according to a procedure set forth in Section 42(m) of the Code. All applicable regulations set forth in Section 42 of the Code, as amended, is hereby incorporated by reference.

2.3 The distribution of tax credits for Greater Minnesota was based upon the housing needs assessment prepared by MHFA staff and comments from the Greater Minnesota Allocation and Need Analysis Task Force.

2.4 The distribution of tax credits for the Metropolitan Area was developed by the Metropolitan Council, in consultation with the MHFA and representatives of local government and housing and redevelopment authorities. (Minnesota Statutes 1996, Section 462A.222, as amended.)

### **ARTICLE 3 GENERAL CONCEPTS**

3.0 The Plan sets forth selection criteria to be used to determine housing priorities of the MHFA, the State of Minnesota's Housing Credit Agency, which are appropriate to local conditions.

3.1 As part of the evaluation by MHFA, the developer must first demonstrate, to the satisfaction of the MHFA, that the proposed project is marketable and financially feasible.

3.2 The Plan gives preference as required by federal legislation in allocating housing credit dollar amounts among selected projects to:

- a. Projects serving the lowest income tenants; and
- b. Projects obligated to serve qualified tenants for the longest periods.

## **ARTICLE 4**

### **GEOGRAPHIC DISTRIBUTION**

- 4.0 The state of Minnesota is divided into two general geographic areas: (1) Greater Minnesota Area; and (2) the Metropolitan Area, is defined in Article 1. The Greater Minnesota Area consists of the balance of the state. Distribution of the tax credits between the two general areas is based on each area's percentage share of the entire state's total public assistance recipients. For Greater Minnesota the percentage is 49.46%, and for the Metropolitan Area the percentage is 50.54%. Public assistance recipients consist of those receiving Aid to Families with Dependent Children (AFDC or its successor program), General Assistance (G.A.), Minnesota Supplemental Aid (MSA), and Supplemental Security Income (SSI). (These percentages subject to final IRS approval.)
- 4.1 Within the two general areas and counties will administer tax credits within their respective jurisdictions for a certain time period. The city or county may designate a suballocating agency or suballocator in accordance with Minnesota Statutes 4624.222 Subd.
- a. MHFA will administer the tax credits for areas outside the jurisdiction of the local administrators Rural Development (RD) financed projects will receive a special set aside administered by MHFA until the end of the second round of the calendar year of the State RD office notifies the MHFA that the balance of the set aside will be unused. Some suballocators may elect to enter into a cooperative agreement with the MHFA under which MHFA will perform certain functions of the suballocators.
- 4.2 Except for the non-profit set aside, MHFA will not accept applications for developments located within the jurisdiction of suballocators in the first competition, unless the suballocator has entered into a joint powers agreement with the MHFA as contemplated in section 4.1 or has returned their credits to the MHFA.
- 4.3 The Greater Minnesota Suballocator tax credit allocations are based on a percentage amount from the appropriate regional pool equal to the city's or county's percentage share of the total population of Greater Minnesota times the tax credits available for Greater Minnesota, multiplied by 1.25.
- 4.4 The Metropolitan Suballocator tax credit allocation for the Metropolitan Area set up two pools of funds: One pool for the statutorily designated suballocators and a balance pool for administration by the MHFA. The Metropolitan Area distribution is based on a formula that combines share of: households paying 50% or more of income for rent; 1988 employment; 1988 to 2000 employment growth; 1988 households; and 1988 to 2000 household growth. If the Allocation Plan formula gives a suballocator less funds than the 1990 plan, the suballocator will receive at least the 1990 allocation. Additionally, Bloomington and Washington County shall receive \$150,000 minimum each.

**ARTICLE 5**  
**NON-PROFIT SET ASIDE OF FUNDS**

- 5.0 Ten percent of the total tax credits are reserved for allocation to non-profit sponsored developments with a 501(c)(3) or (4) designation as required by Section 42(h)(5) of the Code, and will be administered by the MHFA. In the first competition the non-profit set aside reserves 49.46% for Greater Minnesota and 50.54% for the Metropolitan Area. In the remaining competition, the remaining non-profit tax credit set aside will be available statewide. The non-profit percentage is determined by the respective total of tax credits available for Greater Minnesota and the Metropolitan Areas as a percentage of the for-profit total.
- a. In the first competition, non-profit developments located within the jurisdictions of suballocating agencies will be allowed to apply for non-profit tax credits but not for-profit tax credits, from the MHFA. Non-profits may apply simultaneously to the suballocators and MHFA non-profit set aside. Note that MHFA's application fee is nonrefundable. Non-profit developments located in the for-profit tax credit allocating jurisdiction of the MHFA will be able to apply for tax credits from the for-profit pool if the non-profit set aside has been exhausted.

## **ARTICLE 6 APPLICATION ROUNDS**

6.0 The MHFA in consultation with the suballocators shall determine application competition deadlines when applications are due as required by Statute. For a thorough discussion of suballocator procedures, refer to Article 13.

- a. **In the first round, all applicants must meet the minimum threshold requirements for their geographic area for selection consideration (see First Competition outline in Article 4).** Applications with projects located within the jurisdiction of the suballocators are not eligible to apply to the MHFA with the exception of non-profits in some circumstances (see 5.0 (a) above). No allocating Housing Credit Agency may award tax credits prior to the application closing date for the first competition.
- b. Tax credits for subsequent competitions will be selected based on the selection point system (infra). The threshold criteria will no longer apply after the first competition .
- c. In the remaining round, all unallocated tax credits must be transferred to a unified pool for allocation by MHFA on a statewide basis.

### **6.1 FIRST COMPETITION**

Application deadline for the MHFA and the suballocators is the same date.

- a. Greater Minnesota Pool
  1. RD/Small Project Set Aside (25%, not to exceed \$200,000, of Greater Minnesota tax credit total)
  2. Three suballocators eligible to administer credits within their respective city limits:

Duluth  
Rochester  
St. Cloud
  3. RD Small Project set aside, non-profit set aside and balance of Greater Minnesota administered by MHFA.
- b. Metropolitan Area Pool  
Seven County Metro Area Tax Credits (see definition in Article 1)
  1. Four suballocators eligible to administer credits within their respective city or county limits:

Minneapolis  
St. Paul  
Washington County  
Dakota County
  2. Balance of Metropolitan Area and non-profit set aside administered by MHFA.

**6.2 All applicants statewide must meet one of the following threshold types for the first competition as required by Statute:**

For applications submitted for the first competition, an allocating agency will allocate tax credits only to the following types of projects:

- a. In the Metropolitan Area:
  - 1. New construction or substantial rehabilitation in which, for the term of the extended use period (term of the Declaration of Land Use Restrictive Covenants), at least 75% of the total tax credit units are single room occupancy units which are affordable to households whose income does not exceed 30 percent of the area median income.
  - 2. New Construction or substantial rehabilitation family housing projects that are not restricted to persons 55 years old or older in which, for the term of the extended use period (term of the Declaration of Land Use Restrictive Covenants), at least 75 percent of the total tax credit units contain two or more bedrooms and at least one-third of the 75 percent contain three or more bedrooms; or
  - 3. Substantial rehabilitation projects in neighborhoods targeted by the city for revitalization.
- b. Outside the Metropolitan Area:
  - 1. Projects which meet a locally identified housing need and which are in short supply in the local housing market as evidenced by credible data such as local council resolution submitted with the application. (For an example of the letter format, see HTC Procedural Manual, Attachment 26.)
- c. Projects that are not restricted to persons of a particular age group and in which, for the term of the extended use period (term of the Declaration of Land Use Restrictive Covenants), a percentage of the units are set aside and rented to persons:
  - 1. with a serious and persistent mental illness as defined in Minnesota Statute Section 245.462, Subdivision 20, paragraph (c);
  - 2. with a developmental disability as defined in United States Code, Title 42, Section 6001, paragraph (5), as amended;
  - 3. who have been assessed as drug dependent persons as defined in Minnesota Statute Section 254A.02, Subdivision 5, and are receiving or will receive care and treatment services provided by an approved treatment program as defined in Minnesota Statute Section 254A.02, Subdivision 2;
  - 4. with a brain injury as defined in Minnesota Statute Section 256B.093, Subdivision 4, paragraph (a); or

- 5. with permanent physical disabilities that substantially limit major life activities, if at least 50 percent of the units in the project are accessible as provided under Minnesota Rules, Chapter 1340;
  - d. Projects that preserve existing subsidized housing which (i) is subject to prepayment if the use of tax credits is necessary to prevent conversion to market rate use or (ii) due to physical deterioration would lose its subsidies; or
  - e. Projects financed by Rural Development, which meet statewide distribution goals.
- 6.2 Units that are designed to meet the above threshold requirements must comply with the appropriate local, state or federal requirements or building code (e.g. to be considered a handicapped unit, the unit must be designed to meet the standards in the Minnesota State Building Code, Chapter 1340, and be certified as complying by a registered Architect).
- a. Single Room Occupancy (see definition Article I).
  - b. The MHFA will require that the threshold type the applicant is applying under becomes part of the Tax Credit Reservation and Commitment and be secured by a restrictive use covenant on the land for the term of the compliance period and, as applicable, the extended use period.

#### 6.4 **Remaining Rounds**

- a. There is a single application date for remaining and/or returned credits.
- b. There are no suballocators; all applications are submitted to MHFA.
- c. Applications will be accepted without regard to geographic distribution. There will be one unified pool with no set asides, provided that in the event that the Minnesota Rd office has not received a funding allocation in time for RD projects to be included in the first competition, the RD/Small Projects pool will be carried forward and allocated in the second competition.
- d. If tax credits are still available after the closing of final selection for the final competition, the MHFA will accept applications until the first day of the following month to be evaluated for that month's Board meeting.
- e. The MHFA may decide at its discretion to accept applications for a waiting list if credits are no longer available. If the MHFA decides to maintain a waiting list, all applications would be considered at the same time to determine selection when credits become available.
- f. Projects that have previously received tax credits and have a shortfall of 5 percent or more, subject to MHFA approval, will have priority over other applicants at the start of the final competition. A suballocator may recommend one (1) of their partially funded projects for additional credits, if more than one applicant applies to the MHFA.



## ARTICLE 7 APPLICATION PROCESS

7.1 A complete application must be submitted no later than each of the application due dates in order to be considered for selection, within the applicable competition. Application closing dates subsequent to the first competition may be approximate depending upon availability of tax credits and uncertainty as to volume during the selection period.

- a. The Chief Executive Officer of the local jurisdiction where the project applying for credit is located will be notified and provided reasonable opportunity for comment.
- b. Projects selected and approved by the Board of MHFA, in each selection competition will be approved as eligible to proceed toward commitment/allocation. Projects not selected may, upon notification, choose to compete in subsequent competitions.

7.2 Eligible projects will be evaluated for the amount of Allocation pursuant to Section 42(m)(2)(B) of the code. Such a determination shall not be construed to be a representation or warranty as to feasibility or viability of the project. The MHFA will conduct three evaluations prior to awarding the Credit:

- a. At the time of Initial Application/Reservation.
- b. At the time of Commitment to Allocate Credits/Carryover Allocation.
- c. At the time the building is placed in service.
- d. Prior to each evaluation, the eligible applicant will be asked to submit the most recent financial information on the project. Any federal, state, or local subsidies anticipated must be certified. Misrepresentations of information will result in failure to award IRS Form 8609, debarment from participation in the Housing Tax Credit Program and possible criminal penalties.
- e. Selected applicants failing to place a project in service in the year in which the application is made may be awarded a carryover credit by submitting the following documentation for MHFA approval:
  1. A written Attorney's Opinion Letter or Title Policy verifying the developer is the owner, for tax purposes, or evidence of continued site control of the land and depreciable real property that can be expected to be part of the project; and
  2. A written Certified Public Accountant's Certification verifying the owner has incurred more than ten percent of the reasonably expected basis on the project on or before 4:30 p.m., **November 1** or the next calendar business day of the year in which the reservation was issued with a statement of non-affiliation with the developer and/or owner.
- f. The MHFA reserves the right not to allocate any tax credits.

## **ARTICLE 8**

### **ADDITIONAL ADMINISTRATIVE PROCEDURES**

8.1 No applications will be considered for existing projects which contain units which currently are subsidized by state or federal resources except for troubled projects as defined by MHFA, or projects which could convert to market rate units.

8.2 No individual application or project (for-profit or non-profit) may receive more than \$250,000 in annual tax credits. No developer or general partner may receive tax credits in excess of ten percent (10%) of the state's per capita volume in any calendar year. These limitations are subject to review and waiver by the MHFA Board. Applicant must provide justification for exceeding this limit for consideration by MHFA.

8.3 No project may be divided into two or more projects to receive credits. Multiple applications determined by the MHFA to be one project will be returned to the applicant and all fees forfeited.

- a. MHFA will consider ownership entities, general partnerships, sponsor relationships, location of project if contiguous site, etc. to determine if a multiple application exists.

8.4 The MHFA may elect not to give partial credits to a higher ranking application but to give the credits to the next ranking application that can use the balance of the credits.

8.5 The MHFA has no jurisdiction to interpret or administer Section 42 of the Code, except in those instances where it has specific delegation.

8.6 MHFA may consult with local communities, PHAs, HRAs, RD and HUD to determine the marketability of projects. If, in the opinion of MHFA, the issuance of the tax credits to a project could be detrimental to existing rental property, MHFA will not issue tax credits to the applicant. If necessary, MHFA may require a current market study and will evaluate it using the data from other sources, including tax credit saturation in a community.

## **ARTICLE 9**

### **CREDITS FOR BUILDINGS FINANCED BY TAX EXEMPT BONDS**

**9.0 Summary** Section 42 establishes a separate set of procedures to obtain housing tax credits through the issuance of tax-exempt bonds. Although the tax credits are not counted in the tax credit volume cap for the State of Minnesota, developers of projects should be aware that:

- a. The tax credit allocating agency (either a suballocator or the MHFA) must determine that the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located. The MHFA Qualified Allocation Plan shall apply to all projects for which MHFA is the issuer of the Bonds and all other projects for which the issuer is not located within the area covered by a suballocator allocation plan.
- b. The issuer of the bonds must make a determination that the housing credit dollar amount does not exceed the amount that the issuer determines is necessary for the financial feasibility of the project and its viability as a qualified low-income project throughout the credit period. The issuer evaluation must consider:
  1. The sources and uses of funds and the total financing planned for the project;
  2. Any proceeds or receipts expected to be generated by reason of tax benefits.
  3. The percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries; and
  4. The reasonableness of the developmental and operational costs of the project.

The above language tracks the requirements of Section 42(m) of the Code. Issuers who are unfamiliar with the Code should seek assistance from competent experts in the field to assist in making these determinations. It is not acceptable to merely accept certifications and representations from the owner of the project or their agent. Issuers who are unfamiliar with the tax credit program should request from MHFA a copy of the MHFA Housing Tax Credit Program Procedural Manual.

**9.1** The following steps must be met before a Form 8609 will be issued by the allocation agency.

- a. Prior to Bond Issuance:
  1. The developer must submit to the allocating agency all documents required for an application for tax credits under Section VIII of the Housing Tax Credit Program Procedural Manual and any additional information requested by the allocating agency. For projects for which the MHFA is the allocating agency, the developer must submit a review fee equal to three percent (3%) of the requested annual tax credit amount. In addition, if the issuer is not the MHFA or a suballocator, the initial submission must include a preliminary evaluation of the tax credit dollar amount and project costs under Section 429(m)(2)(D). Based upon the submission of documents the allocating agency will issue a letter with its preliminary determination as to whether the project satisfies the requirements for allocation of a housing credit amount under the qualified

allocation plan applicable to the area in which the project is located. This review is expected to take six to eight weeks.

2. Subsequent to the project having been placed in service, the development must submit to the allocating agency an application for Form 8609 meeting the requirements of section 9.3.

9.2 In order to qualify for the exemption from credit volume cap, the taxpayer/owner must enter into a Declaration of Land Use Restrictive Covenants. Section 42(h)(6)(C)(ii) provides that the credit amount claimed by the taxpayer/owner under this exception may not exceed the amount necessary to support the applicable specified in the use agreement.

- a. In order to qualify for the credit volume cap, Section 42(m)(1)(D) provides that the project must satisfy the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located. For projects receiving and allocation of tax-exempt bonds from the Department of Finance pursuant to Minnesota Statutes, Section 474A.061 after January 25, 1996, in order to qualify under the MHFA Qualified Allocation Plan, a developer must demonstrate that the project is eligible for not less than 25 points. The threshold requirements in Section VII (A) do not apply to tax-exempt bond financed projects.

- b. In order to qualify for the exemption from the credit volume cap, Section 42(m)(2)(D) provides that the governmental unit which issues the bonds (or on behalf of which the bonds were issued) must make a determination that the credit amount to be claimed does not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified housing project throughout the credit period in a manner consistent with the MHFA Housing Tax Credit Procedural Manual.

9.3 A building owner requesting the issuance of an IRS Form 8609 must submit the following:

- a. Evidence from the issuer of the bonds that the bonds received an allocation of tax-exempt bond volume cap from the State of Minnesota;

- b. Evidence that the governmental unit which issued the bonds (or on behalf of which the bonds were issued) made a determination that the amount of credits allocated to the project do not exceed the amount necessary to assure project feasibility pursuant to Section 42(m)(2)(A)(B), including a copy of the final written determination (and the analysis on which it was based) that the credits allocated to the building did not exceed the maximum tax credit based upon the lesser of the eligible basis or the amount necessary to achieve financial feasibility. The issuer analysis and determination must address all of the items set forth in Section 42(m)(2)(B). The determination must be based upon, and have attached to it as Exhibits the following items:

1. A CPA's Audit Report and a Final Cost Certification (HTC 9) based upon an audit of the owners schedule of total project costs.

2. Updated HTC Application signed by at least one general partner involved in the project and nonprofit partner if appropriate.
3. Documentation of the amount and disposition of Reserves, Contingencies, and any cash savings. If the above revert back to developer/owner, general partner or any ownership interest, the issuer should consider these as deferred developer fees, and for purposes of tax credit allocation, restrict the developer.
4. Copies of final Syndication, Private Placement, or Individual Investment Agreements disclosing terms and conditions and indicating the final amount of proceeds or receipts generated by the tax credits.
5. Copies of final documents of all sources of funds (mortgage loans, grants, etc.) disclosing all terms and conditions.
6. A 15-year after-tax cash flow proforma (for five or more units) signed by the lending institution or source of credit enhancement, if any, signifying that they are aware of the figures presented on the HTC application.
7. A copy of the executed final Partnership Agreement.

c. An opinion of counsel verifying that:

1. The buildings qualify for an allocation of credits under Section 42(h)(4) and that the legal description of the property financed with the tax-exempt bonds is identical to the legal description of the property subject to the Declaration of Land Use Restrictive Covenants;
2. The name and legal designation of the ownership entity that will receive the tax credits. (The opinion should include that the business is in good standing and duly authorized in Minnesota.)
3. The name and legal designation and Tax Identification (TIN) of all the general partner(s), the contact person and the required authorized signatories. If the partners are an organized entity, such as a limited liability corporation, a limited liability partnership, or an organized partnership, then provide the above information for each.
4. Identification and copies of any waivers required by Section 42 obtained from the IRS.

d. A non-refundable 5906 fee equal to three percent (3%) of the annual tax credit amount as determined by MHFA, not to exceed the fees established in the HTC Procedural manual;

e. The following additional information:

1. Copy of Certificate of Occupancy provided by the local governmental authority having jurisdiction for each building. If not available from local government, a Certificate of Substantial Completion prepared by the architect will be accepted;
2. A current utility allowance schedule from the housing authority or utility company;

3. Agreement to Utilize Public Housing and Section 8 Waiting Lists (HTC 11), and cooperative agreement between the HRA/PHA and owner.
4. Recorded copy of MHFA Declaration of Land Use Restrictive Covenants (should be recorded after final determination of tax credit amount of MHFA).
5. Original Certification by Owner/Application for Issuance of IRS Form 8609 and required attachments (HTC 3) concerning:
  - i. The Placed in Service date as defined in IRS Notice 88-116 for each building and/or type of tax credit. Month and year should correspond with occupancy certificate. If the month and year do not correspond, submit a written statement indicating the reason;
  - ii. Compliance with all applicable design requirements; and
  - iii. Compliance with all requirements of selection under paragraph 9.2. of this section.
  - iv. Calculation of Tax Credit (HTC 8).
6. Maintenance and Operating Expense Review and Underwriting Certification (HTC 20).
7. For compliance monitoring purposes;
  - i. Current rent roll;
  - ii. Building Map, (HTC 28);
  - iii. Utility Allowance Information (HTC 21) Tenant Paid Utility Allowances to include a breakdown of the utilities that a tenant pays directly and the actual charge of each type of utility for the various unit types (one bedroom, two bedroom, etc.) and housing types (apartment, town home, etc). Also, include a list of each unit type, total paid utilities, contract rent, and gross rent; and
  - iv. Statement of Election of Gross Rent Floor (HTC 26)
8. Original photographs of the completed buildings.
9. It is the policy of the Minnesota Housing Finance Agency to take affirmative action to provide equal opportunity in all of our endeavors. Complete, execute and return the following forms:
  - i. Affirmative Fair Housing Marketing Plan describing the marketing strategies that an owner will use, including, but not limited to special efforts the owner will make to attract persons who are least likely to apply in addition to a broad cross section of the local population without regard to religion, sex, national origin or status as a recipient of public assistance.
  - ii. A tenant selection plan describing the tenant selection policy that an owner will use, including, but not limited to: establishment of procedures which (1) promote maximum utilization of units and set minimum standards of no fewer than two persons per bedroom; (2) where two equally qualified households

apply for a unit, preference shall be given to the larger household; and (3) support and implement the cooperatively developed housing plan between the owner and local housing authority.

iii. Equal Employment Opportunity Policy Statement

**ARTICLE 10**  
**PROCEDURE FOR PROJECT SELECTION**

Applications must include the HTC Market Qualification Information form, Maintenance and Operating Expense Review and Underwriting Certification form. An application will not be accepted without this information. The MHFA will evaluate this information as a part of project feasibility.



## **ARTICLE 11 PROJECT SELECTION**

11.0 Selection Priorities: Are included herein by reference under Exhibit A.

11.1 Preference Priorities: Are included herein by reference under Exhibit A.

11.2 Tie Breakers:

If two or more proposals have equal number of points, the following will be used to determine selection:

- a. First tie breaker will be total number of points in preference priority criteria, if a tie still remains,
- b. Second tie breaker, city development priority will be given to a project located in a city that has not received tax credits in the last two years; if a tie still remains,
- c. Third tie breaker, priority will be given to a project with the lowest percentage of intermediary costs; if a tie still remains,
- d. Fourth tie breaker will be by lot.

## ARTICLE 12

### MHFA COMPLIANCE MONITORING

12.0 Compliance monitoring by the MHFA will be required as a result of the Federal Budget Reconciliation Bill. All tax credit projects will be monitored by the MHFA in accordance with Section 42(m)(1)(b)(iii) of the Code.

#### 12.1 Recordkeeping and Record Retention Provisions:

- a. Recordkeeping Provision. The owner of a low income housing project must keep records for each qualified low income building in the project showing each year:
  1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet);
  2. The number of occupants in each low income unit and the number of minors. Housing information concerning ethnicity, elderly or family household and student resident status, and type and amount of rental assistance;
  3. The percentage of residential rental units in the building that are low income units, models, offices, and management units;
  4. The rent charged on each residential rental unit in the building (including utility allowance). Documentation including rent rolls, leases, and utility allowances per Internal Revenue Service Notice 94-60 issued June 1994;
  5. The low income unit vacancies in the building and the rentals of the next available units;
  6. The annual income certification of each low income tenant on an MHFA Tenant Income Certification, HTC 14;
  7. Documentation to support each low income tenant's income certification. Anticipated income of all adult persons expecting to occupy the unit must be verified and included on a Tenant Income Certification **prior** to occupancy and **annually** recertified for continued eligibility. (i.e. Written third party verification is always preferred. Income verifications are sent directly to and returned by the source to management, not through the applicant. Specific forms of income verification are in the HTC Compliance Monitoring Manual.);
  8. The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project);
  9. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

10. Any additional records necessary to verify compliance with additional restrictions included in the carryover agreement or Declaration.
- b. Record Retention Provision. The owner of a low income housing project must retain the records described in 11.1(a) for each building in the project for at least six years beyond the end of the term of the Declaration of the building.

## 12.2 Certification and Review Provisions:

- a. Certification. The owner of a low income housing project must certify to the MHFA that:
  - 1a. The project meets the minimum requirements of the 20/50 test under Section 42(g)(1)(A), the 40/60 test under Section 42(g)(1)(B), or the 25/60 test under Section 42(g)(4), whichever minimum set aside test is applicable to the project, and the 15/40 test under sections 42(g)(4) and 142(d)(4)(B), for “deep rent skewed” projects, if applicable to the project; and
  - 1b. The project complies with the requirements for Special Set-Aside on which the allocation was based, (e.g. 20% AMI, 40% AMI, 50% AMI) as applicable.
2. There has been no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) for any building in the project.

Items 3a and/or 3b as applicable:

- 3a. The owner has received an annual Tenant Income Certification from each low income resident and documentation to support that certification.
- 3b. The owner has a recertification waiver letter from the IRS in good standing, has received an annual Tenant Income Certification from each low income resident, and documentation to support the certification at their initial occupancy.
4. Each low income unit in the project has been rent-restricted under Section 42(g)(2) of the Code.
5. All units of the project are and have been for use by the general public (as defined in §1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, and adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.
6. The building and low-income units in the project are and have been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low income unit in the project.

7. There has been no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project since last certification submission.
  8. All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings.
  9. If a low income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
  10. If the income or tenants of a low income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size was or will be rented to residents having a qualifying income.
  11. The project meets the provisions, including any special provisions, as outlined in the extended low income housing commitment, (not applicable to buildings with tax credits from years 1987-1989), including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1927 U.S.C. 1437s (for buildings subject to Section 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438-439).
  12. All low income units in the project are and have been used on a nontransient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(III) or single-room-occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)(iv) of the Code).
  13. The project complies with the requirements for all federal or state housing programs (e.g. FmHA assistance, HOME, Section 8 or tax-exempt financing), as applicable.
  14. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving “qualified non-profit organizations” under Section 42(h)(5) of the Code and its non profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.
  15. The project is otherwise in compliance with the Code, including any Treasury Regulations, the applicable State Allocation Plan, and all other applicable laws, rules and regulations.
  16. There has been no change in the ownership or management of the project.
- b. Review. Under the review provision, a monitoring procedure must require:

1. An owner of a low income housing project to submit to the MHFA a completed signed copy of Internal Revenue Service Form 8609 for the first year of the credit period, together with the Schedule A and Form 8586.
2. The MHFA will inspect low income housing projects once every three years, and review the tenant income certifications for at least 20 percent of the tenants (and previous tenants, to the extent necessary) and the documentation the owner has received to support those certifications. All projects shall have their first compliance inspection no later than the year following the first credit period.

The low income housing projects to be inspected must be chosen in a manner that will not give owners of low income housing projects advance notice that their records for a particular year will or will not be inspected. The MHFA may give an owner reasonable notice that an inspection will occur so that the owner may assemble records (i.e. 30 days advance notice of inspection). See 11.4 for the auditing provision that is required to be included in all monitoring procedures.

12.3 Inspection Provision. The MHFA has the right to perform an inspection of any low income housing project at least through the end of the term of the Declaration of Land Use Restrictive Covenants. An inspection includes a physical inspection of any building(s) in the project, as well as a review of the records described in 12.1. The auditing provision of this paragraph is required in addition to any inspection of low income certification and documentation under paragraph 12.2(a).

#### 12.4 Notification of Non-Compliance Provisions:

- a. In General. The MHFA will give the notice described in Section 1.42-5(e)(2) to the owner of a low income housing project and the notice described in Section 1.42-5(e)(3) to the Internal Revenue Service.
- b. Notice to Owner. The MHFA will provide prompt written notice to the owner of a low income housing project if the MHFA does not receive the certification described in 12.2(a) or 12.3 or discovers in an audit, inspection, or review, or in some other manner, that the project is not in compliance with the provisions of Section 42.
- c. Notice to Internal Revenue Service. When required, MHFA will file Form 8823, Housing Credit Agencies Report of Non-Compliance, with the Internal Revenue Service no later than 45 days after the end of the correction period (as described in 12.5, including extensions permitted). The MHFA must check the appropriate box on Form 8823 indicating the nature of the noncompliance or failure to certify and indicating whether the owner has corrected the noncompliance or failure to certify. If the MHFA reports on Form 8823 that a building has gone entirely out of compliance and will not be in compliance at any time in the future, the MHFA need not file Form 8823 in subsequent years to report that building's noncompliance.
- d. Project owners shall provide to MHFA any evidence of noncompliance correction and correspondence to or received from the Internal Revenue Service with respect to any reported noncompliance.

12.5 Correction Period. The correction period shall be that period specified in the notice to the owner during which an owner will have the opportunity to supply any missing certifications and bring the

project into compliance with the provisions of Section 42. The correction period will be set by MHFA and will not exceed 90 days from the date of the notice to the owner described in paragraph 12.5(b). The MHFA may extend the correction period for up to six months, but only if the MHFA determines there is good cause for granting the extension.

12.6 Liability. Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. The MHFA's obligation to monitor for compliance with the requirements of Section 42 does not make the MHFA liable for an owner's noncompliance.

## **ARTICLE 13**

### **SUBALLOCATOR PROCEDURES**

13.0 A city or county is eligible to receive a reserved portion of the state ceiling under this subdivision if it submitted a written request to the agency within 45 days after June 2, 1987, to act as a designated housing credit agency as provided in section 42 of the Internal Revenue Code of 1986. A city or county may designate its housing and redevelopment authority as a suballocating agent to allocate low-income housing credits on behalf of the city or county. The city of Minneapolis or the city of Saint Paul may designate the Minneapolis/Saint Paul Housing Finance Board to allocate low-income housing credits on behalf of each city. MHFA will administer the tax credits for areas outside the jurisdiction of the suballocators.

13.1 The application deadline for the suballocating agencies in the first competition will be the same as the MHFA's. No allocating agency may award tax credits prior to the application closing date for the first competition. In the first competition, all applicants must meet minimum threshold requirements for their geographic area to selection consideration (see Article 6.2).

13.2 In the first competition, for-profit tax credits projects located within the jurisdiction of suballocating agencies will apply to the suballocator for tax credits. Except for the non-profit set aside, the MHFA will not accept applications for projects located within the jurisdiction of suballocators in the first competition, unless the suballocator has returned their credits to the MHFA. Non-profit projects located within a suballocator's jurisdiction will be allowed to apply for non-profit tax credits from the MHFA. Non-profits may apply simultaneously to the suballocators and MHFA non-profit set aside.

13.3 Before the application deadline for the final competition, the suballocators shall return all uncommitted and unallocated tax credits to the MHFA, along with copies of the application for tax credits for all selected projects and allocation or commitment agreements.

13.4 In the final round, all unallocated tax credits must be transferred to one unified pool for allocation by the MHFA on a statewide basis. All applications are submitted to MHFA. During the final competition, a suballocator may recommend one (1) of their partially funded projects for additional credits, if more than one applicant applies to MHFA.

13.5 In order that all of a project's tax credits are allocated by a single Housing Credit Agency, MHFA may apportion additional tax credits to a suballocating city or county for a project that has already received a commitment or allocation of tax credits from the suballocating agency, if all of the tax credits apportioned to the suballocator have been committed or allocated. These supplemental tax credits must be used only for the selected project and must be allocated to the project by a carryover allocation or IRS Form 8609 before November 15 of the year in which the selection was made. If a suballocator determines, at any time after the initial reservation, that a project cannot use or is no longer eligible for all or a portion of the tax credits reserved to the project, the credits must be returned to MHFA before December 1 of the year in which the suballocator selected the project.

13.6 If a suballocator determines at any time after the initial commitment or allocation of tax credits for a specific project that the project is no longer eligible for all or a portion of the housing tax credits committed or allocated to the project, the tax credits must be transferred to MHFA to be reallocated. If the tax credits for which the project is no longer eligible are from the current year's annual ceiling, and the suballocator maintains a waiting list, the suballocator may continue to commit or allocate the credits until no later than October 1, at which time any uncommitted credits must be transferred to MHFA.

13.7 Suballocators are responsible for the issuance of the IRS Form 8609 for all projects for which they have allocated tax credits. In instances where both a suballocator and MHFA have allocated credits to a project, the Housing Credit Agency that first allocated tax credits to the project will prepare the IRS Form 8609.

13.8 Before January 31, the suballocator will submit to MHFA an original completed IRS Form 8610 along with the original Allocation or Carryover Agreements and original IRS Form 8609s completed and issued to projects selected since February 28th of the proceeding calendar year. MHFA will prepare a comprehensive IRS Form 8610, incorporating all carryover and 8609 allocation made in the state of Minnesota for filing with the IRS.

13.9 Suballocators are responsible for the monitoring of tax credit projects, for the term of the Declaration of Land Use Restrictive Covenants, in accordance with 42(m)(1)(b)(iii) (See Article 12) to ensure compliance with applicable federal, state and local requirements. Compliance records shall be available upon request to MHFA from the suballocator or its monitoring agent.

13.10 Before January 31, suballocators will submit to MHFA compliance staff a comprehensive updated report listing all of the HTC projects that have been awarded tax credits by the suballocator. Items to be included in the report are project name, address, building identification numbers, ownership entity and tax identification number, total number of residential units, number of HTC units, year of allocation, amount of tax credits awarded and other information as needed. In addition, suballocators will submit a list of the projects that have been in noncompliance, the year of noncompliance, inspection date and type of noncompliance along with copies of the IRS Form 8823 and the report of noncompliance findings sent to the owner. Suballocators will also submit a copy of their monitoring requirements, procedural manual and forms, and, if applicable, a copy of the monitoring contract with an outside vendor.

13.11 Starting in 1999, a suballocator may elect to enter into a Joint Powers Agreement with MHFA under which MHFA may perform certain functions related to the credit allocation and compliance monitoring. As a condition of the Joint Powers Agreement, the participating suballocator will apportion its entire annual tax credit distribution to MHFA to administer.



## **ARTICLE 14 AMENDMENTS TO PLAN**

This plan is subject to modification or amendment at any time to ensure that the provisions conform to the requirements of the Code and applicable State Statute. MHFA may also make nonsubstantive changes to the plan to update population changes, dates, or minor updating through MHFA Board action.

**This allocation plan has been prepared to comply with the regulations set forth in Section 42 of the Code. The allocation plan may or may not be subject to amendment in order to conform to the Code and applicable state statute.**